UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JANICE ABRAMOWITZ	:	
v.	:	3:01CV492(AHN)
OFFICER CAROL OGRINC	:	
LT. JAMES GEORGE	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

Presently pending before the court is defendants' motion for summary judgment. Defendants argue that summary judgment should be granted as a matter of law because the action is barred by the doctrine of qualified immunity. For the following reasons, defendants' motion [doc. # 15] is GRANTED.

FACTS

On December 4, 1999, Defendants Carol Ogrinc ("Ogrinc") and Lieutenant James George ("George")(collectively, the "Defendants") responded to a complaint by Boris Pogacnik ("Pogacnik"), a neighbor of Plaintiff Janice Abromowitz ("Abromowitz" or, the "Plaintiff"). Pogacnik complained that he witnessed a woman remove a no trespassing sign from a tree located on his property. He showed the Defendants a map indicating that the tree was located on his property and gave a description of the alleged trespasser and her clothing. The Defendants then went to the Plaintiff's residence and conducted an interview of the Plaintiff, who fit the description provided by Pogacnik. Plaintiff consented to an

inspection of her closets. During the inspection, the Defendants found a coat matching the description given by Pogacnik. Based upon the information provided by Pogacnik and their own investigation, the officers believed probable cause existed to issue a summons and complaint to Plaintiff for violating Connecticut General Statue §53a-107, a class A misdemeanor for criminal trespass in the first degree. The Defendants did not arrest Plaintiff or take her into custody. The summons required Plaintiff to appear at the Norwalk Superior Court on December 14, 1999.

Plaintiff contends in her complaint that the Defendants submitted her to a warrantless arrest that was not supported by probable cause. She further alleges that the Defendants intentionally filed a false police report misstating the facts of the incident in order to justify the arrest.

STANDARD OF REVIEW

In a motion for summary judgment, the moving party bears the burden of establishing that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Rule 56(c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986) (plaintiff must present affirmative evidence in order to defeat a properly supported summary judgment motion).

Summary judgment is appropriate when the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317 322 (1986). "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. at 322-23; see also, Goenaga v. March of Dimes Birth Defects Foundation, 51 F.3d 14, 18 (2d Cir. 1995) (movant's burden satisfied if it can point to an absence of evidence to support an essential element of nonmoving party's claim).

The Court must resolve "all ambiguities and draw all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d. Cir.), cert. denied, 506 U.S. 965 (1992). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). If the nonmoving party submits evidence that is "merely colorable," or is not "significantly probative,"

summary judgment may be granted. Anderson, 477 U.S. at 249-50. A mere suggestion of evidence in support of plaintiff's position will not suffice. Id. at 252; Hale Propeller, L.L.C. v. Ryan Marine Prods. Pty., Ltd., 151 F.Supp.2d 183, 186 (D. Conn. 2001)("The non-moving party bears the burden of coming forward with sufficient evidence to negate the movant's position and to show the existence of genuine issues of material fact."). Unsupported assertions and conclusions of the nonmoving party are not enough to overcome a well-pleaded summary judgment motion. Tunnel v. United Techs. Corp., 54 F.Supp.2d 136, 139 (D. Conn. 1999); Lamontagne v. E.I. DuPont de Nemours & Co., 834 F.Supp 576, 580 (D. Conn.), aff'd, 41 F.3d 846 (2d Cir. 1994).

"[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 247-48; See generally 10A C. Wright, A. Miller, &

M. Kane, Federal Practice and Procedure § 2725, pp. 93-95 (1983).

DISCUSSION

I. Local Rule 9(c)

In addition to the requirements of Rule 56 of the Federal Rules of Civil Procedure, parties to a summary judgment motion must adhere to the Local Rules of the District of Connecticut. Rule 9(c) of the Local Rules governs summary judgment motions. Local Rule 9(c)(1) requires the moving party to submit a "separate, short, and concise statement of material facts which are not in dispute." Local Rule 9(c)(2) places a similar burden on the party opposing the motion. The nonmoving party must state "whether each of the facts asserted by the moving party is admitted or denied" and include a "separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried." Local Rule 9(c)(3) further requires that "[e]ach statement of material fact in a Local Rule 9(c) Statement by a movant or opponent must be followed by a citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial." Local Rule 9(c)(1) makes clear that the facts set forth by the moving party in its statement shall be deemed admitted unless

controverted by the nonmoving party in its 9(c)(2) statement. See Mr. & Mrs. A v. Weiss, 121 F.Supp.2d 718, 721 (D. Conn. 2000).

Plaintiff has failed to comply with the standards set forth in the Local Rules for a 9(c)(2) statement. Plaintiff failed to state whether the facts asserted by the Defendants are admitted or denied; thus, each fact stated by the Defendants is deemed admitted. Plaintiff does submit in her statement a section purported to be "a list of each issue of material fact as to which it is contended there is a genuine issue to be tried"; however, Plaintiff has not supported this "statement of material fact[s]" with the citations and evidentiary support required by Local Rule 9(c)(3). This statement cannot serve as a proper basis to oppose a summary judgment motion. Moreover, the alleged genuine issues of material fact identified by the Plaintiff are nothing more than legal conclusions or propositions and do not suffice to raise legitimate, genuine issues of material fact.

"The submission of legal argument and conclusions of law, rather than a 'separate, short and concise statement of material facts,' and the failure to admit or deny the statements set forth by the moving party do not serve the purpose of Local Rule 9." Mr. & Mrs. A, 121 F.Supp.2d at 721.

A 9(c)(2) statement that is not in compliance with the Local Rules is the equivalent of no filing at all and is sufficient reason to grant summary judgment in favor of Defendants on all claims and and counter claims. See Dusanenko v. Maloney, 726 F.2d 82, 84 (2d. Cir. 1984) (no filing in compliance with local rule; grant of summary judgment); Scianna v. McGuire, No. 3:94CV761(AHN), 1996 WL 684400, at *2 (D. Conn. March 21, 1996) ("The court notes that the plaintiff's failure to comply with the court's rules concerning the appropriate way to oppose the defendants' motion for summary judgment is sufficient reason alone to accept the defendants' list of material facts as undisputed."). The Court therefore grants Defendants' Motion for Summary Judgment.

II. Qualified Immunity

Even if the Plaintiff had complied with the requirements of Local Rules 9(c)(2) and 9(c)(3), the court would still find in favor of defendants on the basis of qualified immunity. The doctrine of qualified immunity protects government agents, such as the Defendants, "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." McEvoy v. Spencer, 124 F.3d 92, 97, (2d Cir.1997) quoting Harlow v. Fitzgerald, 457 U.S. 800,

818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). A right is "clearly established" when "[t]he contours of the right [are] ... sufficiently clear that a reasonable official would understand that what he is doing violates that right ... [T]he unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). See, e.g. Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (qualified immunity protects "all but the plainly incompetent or those who knowingly break the law"); Mitchell v. Forsyth, 472 U.S. 511, 528, 105 S.Ct. 2806, 86 L.Ed.2d 411 (officials are immune unless "the law clearly proscribed the actions they took.")

In determining whether a particular right was clearly established at the time defendants acted, the Second Circuit has considered three factors: (1) whether the right in question was defined with "reasonable specificity"; (2) whether the decisional law of the Supreme Court and the [Second Circuit] support the existence of the right in question; and (3) whether under preexisting law a reasonable defendant or official would have understood that his or her acts were unlawful. See Jermosen v. Smith, 945 F.2d 547, 550 (2d Cir.1991).

There is no question that an individual “has a clearly

established right not to be arrested without probable cause." Cook v. Sheldon, 41 F.3d 73, 78 (2d Cir. 1994). Nonetheless, when a police officer reasonably believes that probable cause exists to arrest an individual, that officer's actions are shielded by the doctrine of qualified immunity. See Anderson, 483 U.S. 635. Even if probable cause is lacking, the officer is still immune from liability if he or she can show that: "(1) it was objectively reasonable for him to believe he had probable cause; or (2) officers of reasonable competence could disagree whether probable cause existed." Cook, 41 F.3d at 78 (citing Golino v. City of New Haven, 950 F.2d 864, 868 (2d Cir.1991)). If the officer meets either test, he is entitled to qualified immunity, regardless of his underlying motives for arresting the plaintiff. See Mozzochi v. Borden, 959 F.2d 1174, 1179-80 (2d Cir.1992); Magnotti v. Kuntz, 918 F.2d 364, 367-68 (2d Cir.1990). See also Oliveira v. Mayer, 23 F.3d 642, 649 (2d Cir.1994) (There is qualified immunity when the officer "reasonably believes that a reasonably prudent police officer would have acted even though a reasonably prudent police officer would not have acted.").

In the matter at hand, it was objectively reasonable for the Defendants to believe that probable cause existed to issue the summons and complaint to the plaintiff based on

information given to them by Pogacnik and by their own investigation. For this reason, the Defendants are protected from civil liability by the doctrine of qualified immunity.

CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment [doc. # 15] is GRANTED.

SO ORDERED this 9th day of September, 2002, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge